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IN THE

Supreme Court of the United States

October Term, 1954

No. 1

OLIVER BROWN, ET AL., *Appellants,*

VS.

BOARD OF EDUCATION OF TOPEKA, ET AL., *Appellees.*

No. 2

HARRY BRIGGS, JR., ET AL., *Appellants,*

VS.

R. W. ELLIOTT, ET AL., *Appellees.*

No. 3

DOROTHY E. DAVIS, ET AL., *Appellants,*

VS.

COUNTY SCHOOL BOARD OF PRINCE EDWARD COUNTY, VIRGINIA, ET AL., *Appellees.*

No. 5

FRANCIS B. GEBHART, ET AL., *Petitioners,*

VS.

ETHEL LOUISE BELTON, ET AL., *Respondents.*

APPEALS FROM THE UNITED STATES DISTRICT COURTS FOR THE DISTRICT OF KANSAS, THE EASTERN DISTRICT OF SOUTH CAROLINA AND THE EASTERN DISTRICT OF VIRGINIA, AND ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF DELAWARE, RESPECTIVELY

REPLY BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

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Kirkpatrick, Philosophy of Education 399-433 (1951) 13

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Klineberg, Race Differences: The Present Position of the Problem, 2 International Social Science Bulletin 460 (1950) 13

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La Piere, Attitudes vs. Actions, 13 Social Forces 230-237 (1934) 8

Link and Freiberg, The Problem of Validity vs. Reliability in Public Opinion Polls, 6 Public Opinion Quarterly 87-98 (1942) 8

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REPLY BRIEF FOR APPELLANTS IN NOS. 1, 2 AND 3 AND FOR RESPONDENTS IN NO. 5 ON FURTHER REARGUMENT

The briefs filed on this reargument by appellees and *amici curiae* (with the exception of those in Nos. 1 and 5, and the brief filed on behalf of the Attorney General of The United States) are similar in substance despite some differences in details. Our reply to them can, therefore, be made in one joint brief.

ARGUMENT

Briefs Filed by Appellees and State Attorneys General Do Not Offer Any Affirmative Plan for Desegregation but Are Merely Restatements of Arguments in Favor of Interminable Continuation of Racial Segregation.

In our Brief on Further Reargument, we stated: [1]

> Much of the opposition to forthwith desegregation does not truly rest on any theory that it is better to accomplish it gradually. In considerable part, if indeed not in the main, such opposition stems from a desire that desegregation not be undertaken at all.

Similarly, the briefs filed at this time, both by appellees and state attorneys general seems to be directed against ending racial segregation in our time, rather than toward desegregation within a reasonable time. First, these briefs do not in fact offer any affirmative plan or elements of such a plan for accomplishing the task of desegregation. Secondly, and equally significant, the main reasons now proffered in support of indefinite delay are identical with arguments previously advanced for denying relief on the merits.

This Court has decided that racial segregation is unconstitutional—that it is a practice, moreover, which has

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[1] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, 1954 Term, p. 31.

such effects on its victims that it can only be described as abhorrent. Yet, in answering questions 4 and 5, propounded by the Court, the States do not even get around to what must, in the light of that decision, be the main problem underlying those questions: How can this practice be most expeditiously done away with? Reasons for delay, which would seem to occupy at best a subsidiary position, are the sole preoccupation of state counsel, and the affirmative problem gets virtually no attention.[2]

The brief of the Attorney General of Florida does contain a Point entitled "Specific Suggestions to the Court in Formulating a Decree."[3] But, the effect of the suggested plan[4] would be to subject the constitutional rights of Negro children to denial on the basis of such a variety of intangible factors that the plan itself cannot be seriously regarded as one for implementing the May 17th decision.

Each individual Negro child must, under the Florida plan, petition a court of the first instance for admission to an unsegregated school, after exhausting his administrative remedies. It is up to him to establish to that court's satisfaction that there exists no "reasonable grounds" for delay in his admission. "Reasonable grounds" include lack of a reasonable time to amend the state school laws, good faith efforts of the school board in promoting citizens' educational committees, administrative problems, and "evidence of . . . a strong degree of *sincere* opposition and sustained hostility" [emphasis supplied] giving the school board ground to believe that

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[2] It is true that Delaware and Kansas catalogue the progress they have made thus far in accomplishing integration. But both states plead for delay without offering any valid reasons therefor.

[3] Brief of the Attorney General of the State of Florida as *amicus curiae*, pp. 57-65. Hereinafter, citations to briefs of appellees and *amici curiae* will be abbreviated. See, e.g., fn. 5, *infra*.

[4] Set out commencing at p. 61 of the Florida Brief.

admission of the applicant would " . . . create emotional responses among the children which would seriously interfere with their education." In other words, the applicant's right is to be postponed until everything seems entirely propitious for granting it. It is submitted that this is not a plan for granting rights, but a plan for denying them just as long as can possibly be done without a direct overruling of the May 17th decision.

Lest there be any doubt about this, the final criterion for admission to unsegregated schooling should be quoted:[5]

> (6) Evidence that the petitioner's application was made in good faith and not for *capricious* reasons. Such evidence should demonstrate:
>
> (a) That the petitioner personally feels that he would be handicapped in his education, either because of lack of school plant facilities or psychological or sociological reasons if his application for admission is denied.
>
> (b) That the petitioner is not motivated in his application solely by a desire for the advancement of a racial group on economic, social or political grounds, as distinguished from his personal legal right to equality in public school education as guaranteed by the 14th Amendment. This distinction should be carefully drawn [emphasis supplied].

Where the devisers of a plan are disposed to characterize opposition to desegregation as "sincere" and reasons for desiring admission as "capricious", we cannot be surprised at a rather peculiar procedural consequence of the dispensation they set up. The "petitioner", if he is to make timely application, exhaust his administrative remedies, and allow

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[5] Florida Brief, p. 63.

time for appeal, will have to draw this fine distinction at about four years of age, if he is to start the first grade in a desegregated school. Out of the mouths of babes and sucklings will have to come a wisdom in self-analysis which surely has never in the history of this country been required of any applicant for relief from the denial of a personal constitutional right. The Florida Brief is no real exception to the statement that none of the States has offered any plan for actually implementing the decision of this Court.

The quality and thrust of the reasons now advanced for delay may best be evaluated by noting that (except for those that deal with purely administrative matters obviously requiring little time for solution) they are arguments which were advanced at an earlier stage in this litigation as grounds for denying relief on the merits, and now, under slightly altered guise, they walk again after their suposed laying to rest on May 17. Thus, the impossibility of procuring community acceptance of desegregation, urged earlier as a ground for decision on the merits,[6] now turns up as an argument for indefinite postponement [7] with no convincing reasons given for supposing that community attitudes will change within the segregated pattern.

The prediction that white parents will withdraw their children from public schools is repeated,[8] with the implied hope, no doubt, that at some remote date they will have attained a state of mind that will result in their leaving their children in school. "Racial tensions" are again

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[6] South Carolina Brief (1952) p. 27. Cf. *Id.* at p. 35; Virginia Brief (1952) pp. 24-25.

[7] Virginia Brief (1954) p. 13; Delaware Brief (1954) pp. 16, 25; Florida Brief (1954) p. 201 ff.; Texas Brief (1954) pp. 16-17; North Carolina Brief (1954) pp. 7-8.

[8] *Compare* Florida Brief (1954) pp. 26-27 and North Carolina Brief (1954) pp. 36-37 *with* Virginia Brief (1952) p. 30.

predicted.[9] Negro teachers may lose their jobs.[10] Violence is warned of.[11] The people and the legislature will abolish the school system or decline to appropriate money for its support.[12]

All these are serious matters, but we have elsewhere shown solid reason for believing that those dire predictions, one and all, are unreliable. There is no reason for supposing that delay can minimize whatever unpleasant consequences might follow from the eradication of this great evil. Here, however, the point is that, where these arguments are resuscitated as grounds for delay, the inference is that their sponsors favor delay as long as present conditions prevail—that, in other words, they now want to delay desegregation just as long as the conditions exist which they formerly regarded as sufficient grounds for imposing segregation as a matter of legal right. The distinction is too fine to make such practical difference, either to the Negro child who is growing up or to this Court.

That it is opposition to the principle of the May 17th decision that animates these briefs is made clear by noting that the equality of schools, *Plessy* style, is now being urged as a ground for delay.[13] Nothing could make it

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[9] *Compare* Florida Brief (1954) p. 95 *with* Virginia Brief (1952) p. 27.

[10] *Compare* Florida Brief (1954) pp. 31-32; North Carolina Brief (1954) pp. 24-25; and Texas Brief (1954) pp. 10-11, *with* Virginia Brief (1952) p. 31.

[11] *Compare* North Carolina Brief (1954) p. 37 and Florida Brief (1954) p. 25 *with* South Carolina Brief (1952) p. 27.

[12] *Compare* North Carolina Brief (1954) p. 36; Virginia Brief (1954) p. 15; and Arkansas Brief (1954) pp. 7-8 *with* South Carolina Brief (1952) p. 27.

[13] *Compare* North Carolina Brief (1954) pp. 25-35, 43; Texas Brief (1954) pp. 2-4; and Maryland Brief (1954) p. 10 *with* Virginia Brief (1952) pp. 18-19 and South Carolina Brief (1952) pp. 8-9.

clearer, moreover, that many responsible officials, taking a realistic view, will not regard the "separate but equal" doctrine as abolished until this Court orders its abandonment in practice. Most significant here is the *amicus curiae* brief of the Attorney General of Texas which, after making a straight-out *Plessy* argument, continues with the statement: "However, if the occasion arises whereby we are compelled to abolish segregation in Texas, it should be a gradual adjustment in view of the complexities of the problem" (p. 4).

Opinion Polls Are Immaterial to the Issues Herein and Do Not Afford Any Basis to Support An Argument that a Gradual Adjustment Would Be More Effective.

Several of the briefs filed herein refer to polls of public opinion in their respective States in support of arguments to postpone desegregation indefinitely.[14] These polls appear to have been made for the purpose of sampling opinions of various groups within the State as to whether they approved of the May 17th decision and whether they thought it could be enforced immediately without friction.

The information as to racial hostility obtained from these polls is indecisive of the issues before this Court. In *Buchanan* v. *Warley*, 245 U. S. 60, 80, this Court stated:

> That there exists a serious and difficult problem arising from a feeling of race hostility which the law is powerless to control, and to which it must give a measure of consideration, may be freely admitted. But its solution cannot be promoted by depriving citizens of their constitutional rights and privileges.

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[14] Texas Brief, pp. 16-17; Virginia Brief pp. 13-14; North Carolina Brief pp. 7-9; Florida Brief pp. 23-24, 105 ff; Delaware Brief p. 12.

We believe the same answer should be given to any suggestion that the enforcement of constitutional rights be deferred to a time when it will have uniform public acceptance.

Even if relevant, results of polls are often not conclusive. For example, the Florida survey polled eleven "leadership" groups. These groups give evidence of a very high degree of "willingness" to comply. Although peace officers are greatly opposed to desegregation (Table 3, p. 138), only two of the eleven groups would not positively comply, and in those cases there is a very even division (Table 4, p. 139). Overall, six of the eleven groups are not opposed to the decision (Table 3, p. 138); 84.5% of white principals and supervisors who, would be charged with the duty of implementation, would comply (Table 4, p. 139). A majority of all groups expect neither mob violence nor "serious violence" (Table 5, p. 140).

Moreover, such polls are not a valid index of how the individuals questioned will in fact act in the event of desegregation. Modern psychological research shows that, especially in the case of broad public issues, many persons simply "do not follow through even on actions which they say they personally will take in support of an opinion." [15]

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[15] BUCHANAN, KRUGMAN AND VAN WAGENEN, AN INTERNATIONAL POLICE FORCE AND PUBLIC OPINION 13 (1954). For other studies dealing with the discrepancy between verbal statements and actions, see LINK AND FREIBERG, "THE PROBLEM OF VALIDITY VS. RELIABILITY IN PUBLIC OPINION POLLS", 6 PUBLIC OPINION QUARTERLY 87-98, esp. 91-92 (1942); JENKINS AND CORBIN, "DEPENDABILITY OF PSYCHOLOGICAL BRAND BAROMETERS II, THE PROBLEM OF VALIDITY", 22 JOURNAL OF APPLIED PSYCHOLOGY 252-260 (1938); HYMAN, "DO THEY TELL THE TRUTH?", 8 PUBLIC OPINION QUARTERLY 557-559 (1944); SOCIAL SCIENCE RESEARCH COUNCIL, COMMITTEE ON ANALYSIS OF PRE-ELECTION POLLS AND FORECASTS 302-303 (1949); LA PIERE, "ATTITUDES VS. ACTIONS", 13 SOCIAL FORCES 230-237 (1934); DOOB, PUBLIC OPINION AND PROPAGANDA 151 (1948); HARTLEY AND HARTLEY, FUNDAMENTALS OF SOCIAL PSYCHOLOGY 657 (1952). See also *Irvin* v. *State*, 66 So. 2d 288, 290-292 *cert. denied* 346 U. S. 927, *reh. denied* 347 U. S. 914.

The Attorney General of Texas sets out in his brief in these cases a survey by the "Texas Poll" showing 71% disapproval of the May 17th decision and 65% approval of continued segregation notwithstanding this Court's decision. It is interesting to note that in *Sweatt* v. *Painter*, 339 U. S. 629, respondents included in their brief a survey made by the same "Texas Poll" showing that 76% of all Texans were "against Negroes and whites going to the same universities." However, this Court ordered Sweatt admitted to the University of Texas. He and other Negroes attended the University.[16] Since then Negroes have been admitted to and are attending this and other public universities in twelve southern States.[16a]

Finally, there is nothing to indicate that an extended delay in ordering the elimination of all segregation will improve public attitudes or eliminate the objections presently interposed. Clearly the polls are irrelevant and should be so treated by this Court.

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[16] It is also significant that many municipal junior colleges in Texas have also desegregated their student bodies. See SOUTHERN SCHOOL NEWS, October 1, 1954, p. 13, c. 5.

[16a] JOHNSON, "PUBLIC HIGHER EDUCATION IN THE SOUTH", 23 JOURNAL OF NEGRO EDUCATION 317 (1954), especially at 328 where Dr. Johnson, University of North Carolina Sociologist, concludes:

> The transition from complete segregation to some degree of integration of Negroes into the publicly-supported institutions of higher learning in the South has already been accomplished in all except five of the Southern states, and most of this change has occurred in the brief period, 1948-1953. Despite numerous predictions of violence, this transition has been accomplished without a single serious incident of interracial friction.

The Wide Applicability of the Decision in These Cases Should Not Affect the Relief to Which Appellants Are Entitled.

Effort is made throughout the briefs for appellees and the several attorneys general to balance the personal and present rights here involved against the large number of children of both races now attending public school on a segregated basis. This argument is made for a twofold purpose: to escape the uniformity of decisions of this Court on the personal character of the rights involved and, secondly, to destroy the present character of the right involved.

Of course, the decision of this Court in the instant cases will have wide effect involving public school systems of many states and many public school children. The mere fact of numbers involved is not sufficient to delay enforcement of rights of the type here involved.[17]

On the face of it, their position is both ill-taken and self-defeating. That it is ill-taken becomes clear when the suggestion itself is clearly stated; obviously, there is nothing in mere numerousness as such which has any tendency whatever to create or destroy rights to efficacious legal relief. Behind every numeral is a Negro child, suffering the effects spoken of by the Court on May 17. It is a manifest inconsequence to say that the rights or remedial needs of each child are diminished merely because others

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[17] We put to one side as obviously immaterial the mere technical character of these suits as class actions under Rule 23(a)(3). Obviously, the mere joinder of plaintiffs in a spurious class suit for reasons of convenience cannot have any effect on the nature of the rights asserted or on the availability of normal relief remedy. Whether a suit is or is not a class action tells us little, in this field of law, as to the magnitude of the interests involved: *Sweatt* v. *Painter* was an individual mandamus suit, but the effect of that decision spread throughout the segregating states.

are in the same position. That this argument is self-defeating emerges when it is considered that its tendency is simply to establish that we have to do with an evil affecting a great many people; presumably, the abolition of a widespread evil is even more urgent than dealing with isolated cases of wrongdoing.

This Court has consistently treated the personal rights of litigants on a personal basis. Every leading case involving discrimination against Negroes has necessarily and demonstrably involved large numbers of people; yet this Court has given present relief on a personal basis to those who showed themselves entitled to it, without any hint of the possibility that the rights of citizenship are diminished because many people are being denied them. The *Sweatt*, *Sipuel* and *McLaurin* cases and *Smith* v. *Allwright*, all, as was well known to this Court and to the country, involved not merely the individuals or class-plaintiffs or geographical subdivision actually before the Court, but also the whole framework of law school, graduate school or primary election segregation. All major constitutional cases involve large numbers of people. Yet there is not a hint, in words or in action, in any past case, to the effect that the wide applicability of a decision was considered material to the right to relief. It is unthinkable that this Court would apply any such doctrine to limit the enjoyment of constitutional rights in general; there is no reason for its making a special and anomalous exception of the case at bar.

Actually, to point to the vast numbers of people whose lives will be affected by the relief granted here is only a diffuse way of raising all the questions as to the consequences of immediate desegregation. We have dealt with these questions elsewhere. The suggestion that mere numerousness makes a difference adds nothing new, but merely serves to confuse the issues by diverting attention from the extremely personal plight of each child, and from his need for present relief.

Average Differences in Student Groups Have No Relevance to the Individual Rights of Pupils: Individual Differences Can Be Handled Administratively Without Reference to Race.

Having attempted to subordinate appellants' personal and present constitutional rights to an alleged overriding consideration of the large numbers of people involved, these briefs for appellees then seek to further limit the individual rights of Negro students by broad characterizations of group intelligence, group morality and health.[18] Specifically, it is pointed out that statistics show that *on the average* Negro children in segregated schools score lower on achievement tests and are *in general* more retarded culturally than white children. This data, contrary to the conclusions advanced thereupon, merely underscores and further documents the finding quoted in this Court's opinion:

> "Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law, therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system."

We have come too far not to realize that educability and absorption and adoption of cultural values has nothing to do with race. What is achieved educationally and culturally, we now know to be largely the result of opportunity

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[18] North Carolina Brief, pp. 39-41; Florida Brief, pp. 19-21, 189.

and environment.[19] That the Negro is so disadvantaged educationally and culturally in the states where segregation is required is the strongest argument against its continuation for any period of time. Yet those who use this argument as a basis for interminable delay in the elimination of segregation in reality are seeking to utilize the product of their own wrongdoing as a justification for continued malfeasance.

Our public school systems have grown and improved as an American institution. And in every community it is obvious that children of all levels of culture, educability, and achievement must be accounted for within the same system. In some school systems the exceptional children are separated from the rest of the children. In others there are special classes for retarded children, for slow readers and for the physically handicapped. But these factors have no relation to race. These are administrative problems with respect to conduct of the public school.

In the past, large city school systems, North and South, have had the problem of absorbing children from rural areas where the public schools and cultural backgrounds were below the city standards. On many occasions these migrations have been very sudden and in proportionately very large numbers. This problem has always been solved as an administrative detail. It has never been either insurmountable or has it been used as an excuse to force the rural children to attend sub-standard schools. Simi-

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[19] KLINEBERG, RACE DIFFERENCES: THE PRESENT POSITION OF THE PROBLEM, 2 INTERNATIONAL SOCIAL SCIENCE BULLETIN 460 (1950); MONTAGUE, STATEMENT ON RACE, THE UNESCO STATEMENT BY EXPERTS ON RACE PROBLEMS 14-15 (1951); MONTAGUE, MAN'S MOST DANGEROUS MYTH: THE FALLACY OF RACE 286 (1952); KIRKPATRICK, PHILOSOPHY OF EDUCATION 399-433 (1951). See KLINEBERG, RACE AND PSYCHOLOGY, UNESCO (1951); ALLPORT, THE NATURE OF PREJUDICE (1954); COMAS, RACIAL MYTHS, UNESCO (1951).

larly, large cities have met without difficulty the influx of immigrants from foreign countries.

Cultural and health standards have always been maintained in public schools and there could be no objection to the continuation of such standards without regard to race. All social scientists seem to be in agreement that race and color have no connection whatsoever with a student's ability to be educated. Achievement and cultural deficiencies are nonracial in character, also. Hence these factors in no wise relate to questions posed as to whether desegregation should take place immediately or over an extended period.

Perhaps the main reasons for rejecting appellees' argument are that the conditions they complain of can never be remedied as long as segregation in public schools is continued and these so-called problems, *i.e.*, average on achievement tests, health, etc., are administrative problems which can be solved by recognized administrative regulations made to fit the problems without regard to pigmentation of the skin. It is significant that appellees and the Attorneys-General who advance these arguments do not give any hope to anyone that the continuation of segregated public education will ever remove these problems which are the product of this segregation.

On the other hand, appellants have shown in their Brief on Further Reargument that on the basis of substantial documented experience: "There is no basis for the assumption that gradual as opposed to immediate desegregation is the better, smoother or more 'effective' mode of transition. On the contrary, there is an impressive body of evidence which supports the position that gradualism, far from facilitating the process, may actually make it more difficult; that, in fact, the problems of transition will be a good deal less complicated than might be forecast by appellees. Our submission is that this, like many wrongs, can be easiest and best undone, not by 'tapering off' but by forthright action" (p. 31).

Official Reactions in States Affected by the May 17th Decision Make it Plain that Delay Will Detract From Rather Than Contribute to the "Effectiveness" of the Transition to Desegregated Schools.

Events occurring in the states affected by the decision of May 17, 1954, do not support the suggestions of appellees and *amici curiae* that further (and limitless) postponement of relief to Negro children will assure an "effective" adjustment from segregated to non-segregated school systems. In terms of legislative, executive or administrative reaction, the southern and border states may now be grouped in three loose categories:

(1) Those which have not waited for further directions from the Court, but have undertaken desegregation in varied measure during the current school year. Typical of the states falling in this category are Delaware,[20] Kansas,[21] Missouri,[22] and West Virginia.[23] Although not a state, the District of Columbia would fall within this group.

(2) Those which have decided to await a decision on the question of relief but have indicated an intention to

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[20] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, pp. 4-7; Brief for Petitioners on the Mandate in No. 5, pp. 10-12.

[21] Brief for Appellants in Nos. 1, 2 and 3 and for Respondents in No. 5 on Further Reargument, pp. 3-4; Supplemental Brief for the State of Kansas on Questions 4 and 5 Propounded by the Court, pp. 13-22; Supplemental Brief for the Board of Education, Topeka, Kansas on Questions 4 and 5 Propounded by the Court, pp. 2-4.

[22] Southern School News, September 3, 1954, p. 9, c. 2-5; *Id.*, October 1, 1954, p. 10, c. 1-5; *Id.*, November 4, 1954, p. 12, c. 1-5; *Id.*, December 1, 1954, p. 10, c. 1-5; *Id.*, January 6, 1955, p. 11, c. 1; *Id.*, February 3, 1955, p. 15, c. 1-5.

[23] Southern School News, October 1, p. 14, c. 1, 5; *Id.*, January 6, 1955, p. 2, c. 4-5.

obey the Court's directions. Kentucky,[24] Oklohoma,[25] and Tennessee[26] are among the states in this category.

(3) Those which have indicated an intention to circumvent the decision of this Court or interminably delay the enjoyment by Negro children of their constitutionally protected rights not to be segregated in public schools. Included in this category are states like South Carolina[27] and Mississippi,[28] which have enacted legislation designed to nullify any decision of this Court in these cases, and states like Virginia[29] and Florida,[30] where either the governors or special legislative committees studying the problem have recommended that "every legal means" be used to preserve segregated school systems.[31]

Against this background of state reaction to the decision of May 17, 1954, it is clear that postponement of relief will serve no purpose. The states in the first category have

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[24] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 7, c. 3; *Id.*, November 4, 1954, p. 16, c. 1; *Id.*, December 1, 1954, p. 9, c. 1, 3.

[25] SOUTHERN SCHOOL NEWS, February 3, 1955, p. 10, c. 1-2; *Id.*, March 3, 1955, p. 16, c. 1; THE NEW YORK TIMES, April 6, 1955, p. 20, c. 5.

[26] SOUTHERN SCHOOL NEWS, October 1, 1954, p. 11, c. 1; *Id.*, December 1, 1954, p. 12, c. 4; NEW YORK POST, March 16, 1955, p. 58, c. 4.

[27] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 12, c. 1-2; *Id.*, February 3, 1955, p. 3, c. 2-4; *Id.*, March 3, 1955, p. 14, c. 1-3.

[28] SOUTHERN SCHOOL NEWS, September 3, 1954, p. 8, c. 3; *Id.*, October 1, 1954, p. 9, c. 4-5; *Id.*, November 4, 1954, p. 11, c. 4-5; *Id.*, January 6, 1955, p. 10, c. 1-2; THE NEW YORK TIMES, April 6, 1955, p. 20, c. 5.

[29] SOUTHERN SCHOOL NEWS, February 3, 1955, p. 10, c. 4.

[30] SOUTHERN SCHOOL NEWS, January 6, 1955, p. 6, c. 2.

[31] Indeed, Governor Marvin B. Griffin of Georgia has asserted: "However, if this court is so unrealistic as to attempt to enforce this unthinkable evil upon us, I serve notice now that we shall resist it with all the resources at our disposal and we shall never submit to the proposition of mixing the races in the classrooms of our schools."

already begun to implement this Court's decision and any delay as to them may imperil the progress already made.[32] The states in the second category have indicated a willingness to do whatever this Court directs and there is certainly no reason for delay as to them. The probable effect of delay, as to states in the third category, must be evaluated in the light of their declared intentions; we are justified in assuming that it would have no affirmative effect, but would merely provide additional time to devise and put into practice schemes expressly designed to thwart this Court's decision.

Conclusion

Appellants recognize that the problems confronting this Court, as it turns to the implementation of its decision in these cases, are of primary magnitude. Their high seriousness is enhanced by the fact that sovereign states are in effect, though not formally, at the bar and that the evil to which the Court's decree must be directed is no transitory wrong but is of the essence of the social structure of a great section of our nation.

Yet, it should be borne in mind that the very magnitude of these problems exists because of the assumption, tacitly indulged up to now, that the Constitution is not to be applied in its full force and scope to all sections of this country alike, but rather that its guarantees are to be enjoyed, in one part of our nation, only as molded and modified by the desire and customs of the dominant component of the sectional population. Such a view, however expressed, ignores the minimum requirement for a truly national constitution. It ignores also a vast part of the

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[32] See, *e.g.*, *Steiner* v. *Simmons*, 111 A. 2d 574 (Del. 1955), rev'g. 108 A. 2d 173 (Del. 1954). There the Supreme Court reversed a chancery court determination that forthwith desegregation was proper under the decision of this Court of May 17, 1954.

reality of the sectional interest involved, for that interest must be composed of the legitimate aspirations of Negroes as well as whites. It certainly ignores the repercussions which any reluctance to forthrightly enforce appellants' rights would have on this nation's international relations. Every day of delay means that this country is failing to develop its full strength.

The time has come to end the division of one nation into those sections where the Constitution is and those where it is not fully respected. Only by forthright action can the country set on the road to a uniform amenability to its Constitution. Finally, the right asserted by these appellants is not the only one at stake. The fate of other great constitutional freedoms, whether secured by the Fourteenth Amendment or by other provisions, is inevitably bound up in the resolution to be made in these cases. For delay in enforcement of these rights invites the insidious prospect that a moratorium may equally be placed on the enjoyment of other constitutional rights.

In disposing of the great issues before it, this Court should do no less than order the abolition of racial segregation in public education by a day certain, as heretofore set forth in Appellants' Brief on Further Reargument.

Respectfully submitted,

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